IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:13/10/2004

CORAM

THE HONOURABLE MR. JUSTICE P.K. MISRA
AND
THE HONOURABLE MRS. JUSTICE PRABHA SRIDEVAN

WRIT PETITION NO.14791 OF 2004

J. Jonah
S/o. late Josuah .. Petitioner

-Vs-

1. Union of India,
rep. by Directorate of C.V.R.D.E.,
Avadi, Chennai 54.

2. The Scientific Adviser
Research and Development
Organisation □B□ Wing,
Sena Bhavan, New Delhi 110 001.

3. The Joint Secretary,
Defence Establishment
Ministry of Defence
South Block, New Delhi 110 001.

4. The Accounts Officer,
PCD Ac (Pension), Allahabad.

5. Under Secretary to Government,
Ministry of Personnel Public
Grievances and Pensions,
Sardar Patel Bhavan, Sansad Marg,
New Delhi 110 001.

6. The Director,
D(VIG & PG) Ministry of Defence,
Sena Bhavan, New Delhi 110 001.

7. The Officer of the CGDA PGO/SGO
West Block-V, R.K. Puram,
New Delhi 110 011.

8. The Central Administrative Tribunal,

Chennai. .. Respondents

For Petitioner : Mr.J. Jonah
Party-in-person

For Respondents : Mr.R. Santhanam, SCGSC

:O R D E R

(The Order of the Court was made by P.K. MISRA, J)

Heard the petitioner-in-person and Mr.R. Santhanam for the respondents.

2. The present writ petition is directed against the order passed by the Central Administrative Tribunal in O.A.No.1430 of 2000 dated 1 7.8.2001. The petitioner has also prayed for a direction to the respondents to award pension including Workmen's Compensation as per the CCS(P) rule Appendix 4: 9th paragraph (as amended) with effect from 1 5.12.87 as per the letter dated 20.7.92 with D.C.R.G and C.G.E.C.G.I.S. amount of Rs.20,000/- with 24% interest per annum and issue the dues as per the promised letter No.C.V.R.D.E/PC/480/LB dated 3.7.1992 .

3. The petitioner was appointed as Machinist on 3.10.1978 in the office of the Combat Vehicle Research and Development Establishment (hereinafter referred to as "CVRDE" in short). In course of time, he was upgraded as Trademan-C with effect from 30.10.1984 and worked as such in CVRDE till 14.12.1987. While he was working, on 28.19.1986, a small chip fell in his right eye and he was treated in different hospitals and ultimately, in August, 1987, he was called for medical check up at Government Ophthalmic Hospital, where he was certified to be completely and permanently incapacitated for further service. Accordingly, his services were terminated on 15.12.1987. The petitioner being admittedly an industrial worker coming within the scope of the Workmen's Compensation Act, 1923 had applied for compensation and a letter was sent to the hospital to intimate the percentage of loss and the exact reason for the disability. At that stage, the Medical Board had opined that the petitioner was not eligible for any compensation as there was no damage to the eyes due "to injuries sustained during work". The petitioner had been paid the gratuity for the period of service of 9 years and odd. Thereafter, the petitioner and his wife had jointly filed O.A.No.563 of 1993 directing the respondents to sanction invalid pension under Rule 38 of CCS Pension Rules or payment of any other pension and also to settle DCRG, Central Government Employees Group Insurance Scheme and Pension arrears. The said application was dismissed on 1.11.1993 on the ground that the petitioner was not eligible for pension as he had not completed 10 years of service. O.A.No.489 of 1993, which had been filed for directing the respondents to give compassionate appointment to his wife in Group-C post, was separately disposed of by the Tribunal by giving a direction to the effect that necessary representation may be made in the prescribed format which could be considered

by the authorities. However, since other particulars and required documents were not furnished, it seems that the matter remained like that. The petitioner had filed Civil Appeal No.7155 of 1996 against the order dated 1.11.1993 in O.A.No.56 3 of 1993 praying for payment of pension in accordance with Rule 38. The Supreme Court disposed of the said appeal with the following Order :-

 Having heard the learned counsel for the appellant and the learned Additional Solicitor General for the Union of India, we find that strictly the rules do not cover the appellant s case to enable a direction being made for granting the relief claimed in this appeal. However, the fact remains that the appellant J. Jonah has been totally blinded in both the eyes as a consequence of the injury suffered by him in the eyes when he was on duty working on a machine. In these circumstances we consider it appropriate that an ad-hoc ex-gratia payment be made by the Union of India to the appellant J. Jonah, this amount is fixed at the sum of Rs. one lakh only to be paid by the Union of India to the appellant J. Jonah. The payment be made within one month.

(Emphasis added)

Thereafter the petitioner had made representation claiming that he should be paid invalid pension. However, the matter remained pending. The petitioner filed Application under Article 32 of the Constitution of India with a prayer to direct the respondents to award compensation under the Workmen s compensation Act, 1923 as per letter No.C1/C/95926/XXXVI dated 20.7.1992. The said Writ Petition (Civil) No.D1442 /1999 (for preliminary hearing) was dismissed with the following order :-

 The grievance of the petitioner cannot be redressed in this petition under Article 32 of the Constitution. Apart from the fact that similar petitions have been dismissed earlier, the petitioner may have a more appropriate remedy either by filing an application before the Administrative Tribunal or a petition under Article 226 before the High Court. If any application for pensionary relief is filed before the Administrative Tribunal, the tribunal will take a reasonable view, with regard to the delay, if any.

(Emphasis added)

Thereafter, the present petitioner filed O.A.No.1430 of 2000, which having been rejected, the present writ petition has been filed.

4. A counter affidavit has been filed on behalf of the respondents stating that the petitioner s claim for pension has got no merit as the petitioner has not completed 10 years qualifying service. It is further indicated that even though an application under the Workmen s Compensation Act had been filed, the same was dismissed for default and it is open to the petitioner to pursue the said matter by filing an application for restoration. It is also indicated that an application filed by the daughter for appointment on compassionate ground was forwarded and is under the active consideration of the Ministry.

5. So far as the grant of pension is concerned, it is apparent that the matter has been concluded by the order of the Supreme Court in Civil Appeal No.7155 of 1996. Even though we have got all the sympathy, in

view of the specific rules relating to grant of pension and particularly in view of the fact that the Supreme Court has rejected the appeal of the petitioner, no order can be passed directing payment of pension. Prayer for a direction to the respondents to pay compensation in the light of the provisions contained in the Workmen s Compensation Act, however, requires careful as well as sympathetic consideration keeping in view the peculiar facts and circumstances of the present case.

6. Before considering the matter at length, it is necessary at this stage to notice some undisputed facts. Even though initially the respondents had raised certain doubts in the earlier proceedings as to whether the injuries which ultimately resulted in loss of eye sight arose in course of duty, in view of the observation of the Supreme Court, there cannot be any dispute on that aspect at the present stage. The order of the Supreme Court has already been extracted earlier. It is however profitable to extract the relevant portions even at the risk of repetition. The Supreme Court in its order dated 19.2.19 99 had observed inter alia:

However, the fact remains that the appellant J. Jonah has been totally blinded in both the eyes as a consequence of the injury suffered by him in the eyes when he was on duty working on a machine.

In view of the aforesaid conclusion of the Supreme Court, it is futile for the respondents to contend that the injuries were not sustained while the petitioner was on duty. It is thus obvious that the petitioner had sustained injuries in an accident arising out of and in course of employment. In view of the categorical observation of the Supreme Court, on the basis of which the Supreme Court thought it fit to grant an adhoc ex-gratia payment, no other conclusion can ever be contemplated. In other words, the basic fact remains that the petitioner had sustained injury which resulted in loss of eye sight in an accident arising out of and in course of employment.

7. In the counter affidavit, the respondents have taken a stand that it is open to the petitioner to file application for restoration before the Workmen s Compensation Commissioner. In normal course, such a stand taken by the respondents cannot be faulted. However, in the peculiar facts and circumstances of the present case, it would not be proper to drive the petitioner to the aforesaid Forum for a formal adjudication of the claim under the Workmen s Compensation Act, when we find that the basic facts to the effect that the petitioner had sustained injuries in an accident arising out of and in course of employment cannot be disputed for the reasons already indicated. Even the materials on record, including the observation made by the Supreme Court, are sufficient to come to the conclusion that the percentage of loss must be calculated at 100%. It would be most unjust to drive the petitioner to the said Forum, keeping in view the fact that the petitioner is a blind person, who has been fighting against all odds for about 15 years. The fact that the petitioner was engaged in a work required for the defence of the country while he sustained injury, cannot be lost sight of. Since the basic facts are not in dispute and the petitioner has already faced the agony of prolonged legal proceedings at different stages and different levels, it would be indeed adding insult to the injury of the petitioner if he

would be forced to pursue the application for compensation under the Workmen's Compensation Act. With a view to end the painful journey and bring the litigations to a conclusion, particularly in the spirit of Lok Adalat, we have thought it fit to consider the matter here, even though we are aware that under the normal circumstances, proceedings under Article 226 of the Constitution is not the appropriate Forum. The learned counsel for the respondents reiterated that the only course open to the petitioner was to go before the Commissioner under the Workmen's Compensation Act. We could have done that. But, the petitioner has already spent many years in litigation and therefore, we think the process could be shortened. The petitioner and his wife were present in Court. We indicated to him the method we are adopting to grant him relief, and we also indicated the quantum of compensation we had arrived at. He understood the implications and was satisfied.

8. As already indicated, the percentage of loss must be taken as 100% and it is a permanent loss. The petitioner was admittedly aged about 36 years at the time when the unfortunate incident took place. As per the Schedule to the Workmen's Compensation Act, the petitioner would have been entitled to roughly a sum of Rs.1,18,000/-. Keeping in view the erosion of money value at the present stage as compared to 15 years back and having regard to all the facts and circumstances of the case, we feel interest of justice would be served by directing payment of Rs.1,50,000/- as compensation which may be paid within a period of three months from the date of receipt of the present order. For directing payment of compensation, we have followed the basic principles contained in the Workmen's Compensation Act and we have also derived inspiration from The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 , in particular Section 47. It is also relevant to observe that had the petitioner continued in service for about 9 months more, he would have been entitled to pension and annual value of such pension would have been approximately equal to the annual interest on a sum of Rs.1 ,5 0,000/-.

9. We understand that the application of the daughter of the petitioner for employment on compassionate ground is under the active consideration and is pending before the Ministry. Keeping in view the circumstances under which the accident occurred, we hope and expect that a decision shall be taken in the matter at the earliest possible time taking a sympathetic view and particularly keeping in view the observation of the Supreme Court that a reasonable view should be taken. It is also made clear that the very fact that compensation is being granted in the present order shall not be considered as a bar for considering the application of the daughter for employment on compassionate ground. Similarly the fact that the accident and the consequent retirement of the petitioner had taken place long back should not be considered as a bar.

10. Subject to the aforesaid observations and directions, the writ petition is disposed of without any order as to costs.

11. We place on record our appreciation for the fair manner in which all the relevant factors have been placed before us by the learned counsel appearing for the respondents.

Index : Yes

Internet :Yes

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To

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